



Friends of the Clearwater

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April 24, 2017

Cheryl Probert
Forest Supervisor
Nez Perce and Clearwater National Forests
903 3rd Street
Kamiah, ID 83536

SENT VIA EMAIL comments-northern-nezperce@fs.fed.us

Dear Supervisor Probert:

We wish to comment on two scoping letters containing several projects, issued on March 24, 2017, the *Small NEPA* proposals. These comments are on behalf of Friends of the Clearwater. We have serious concerns with some these proposals. In particular the pre-commercial thinning is based upon some false assumptions about where previous logging has taken place. The commercial thinning and some of the other projects could have far greater impacts than could be categorically excluded from an environmental assessment (EA) or environmental impact statement (EIS).

Pre-commercial Thinning Proposals (Lochsa-Powell, Moose Creek, North Fork, Palouse, Red River and Salmon River Ranger Districts)

The purpose of this project is to reduce overstocking in stands that have been logged in the past 15 to 25 years. However, the scoping letter maps don't always correspond with areas that have been logged "in the last 15 to 25 years" as is claimed in the scoping letter for each ranger district. Furthermore, the scoping letter (and some maps) would thin within 25 feet of perennial streams, well within the RHCAs. However, RHCAs have not been open to logging for about 25 years, since PACFISH. Thus, there is an inconsistency here that needs to be explained. We expect the Forest Service won't conduct any pre-commercial thinning in any RHCA and will modify these proposals. Otherwise, the only conclusions we can reach is that the Forest Service bungled marking and contracting and/or misled the public about applying PACFISH and INFISH buffers in past timber sales. We sincerely hope the Forest Service is not misleading the public now about the geographic scope of these proposals, which is previously logged stands. We await your reply on this matter and would like to talk this over with you.

The size and scope of this activity covers over 4500 acres. This is one reason the Forest Service must complete a full environmental impact statement (EIS) for these projects because the scope will likely have a significant individual and cumulative impact on the environment.

Any forest condition that is maintained through intense mechanical manipulation is not maintaining ecosystem function. We request detailed disclosure of the historical data used to arrive at the assumptions in the scoping letter. We don't believe the proposed management activities are designed to foster the *processes* that naturally shaped the ecosystem and resulted in a range of natural structural

conditions, they are merely designed to create structural conditions at a point in time, which may not even be natural, or create stands that more closely resemble tree farms. Generally, past process regimes are better understood than past forest structure. How are you factoring in fire, insects, tree diseases, and other natural disturbances in specifying the structural conditions you assume to be representative of the historic range?

One concern with this project is from cumulative impacts. Cumulative impacts could be significant.

Many adverse consequences to soil, ecological processes, wildlife, and other elements of the natural environment are associated with logging, including thinning. (Ercelawn, 1999; Ercelawn, 2000.) For example: "Salvage or thinning operations that remove dead or decayed trees or coarse woody debris on the ground will reduce the availability of forest structures used by fishers and lynx." (Bull et al., 2001.) Since this is a thinning project the impacts on lynx must especially be considered.

While the scoping letter suggests no old growth would be thinned, please disclose how stands to be logged compare to old-growth criteria. We ask this question because RHCAs often contain the forest plan old growth stands. Will the proposed cutting units qualify as old growth in the foreseeable future? What criteria or definition(s) of old growth are you using? Please disclose how the project will impact the old-growth wildlife species, and mature forest associated species.

Please disclose, using tables and maps, the amounts, locations, sizes, and connectivity of all old-growth stands in the project area. Disclose whether it is actual old growth (meets all criteria) or whether it is "recruitment" old growth. Disclose whether or not you have compared all stands proposed for logging and/or burning to the old-growth criteria. Please disclose the methodology used to identify each stand as old growth, recruitment old growth, or not old growth. These questions are important, as the neither the Nez Perce nor Clearwater National Forests may be meeting their old growth standard of 10%. Indeed, FIA data show that the standard is not being met on the Clearwater National Forest.

For the proposal to be consistent with the Forest Plan, enough habitat for viable populations of old-growth dependent wildlife species is needed over the landscape. The Nez Perce and Clearwater National Forest offices have a spotty record at best in insuring the viability of MIS and TES species as documented in the forest plan monitoring reports. Unfortunately, region-wide the FS has failed to meet Forest Plan old-growth standards, does not keep accurate old-growth inventories, and has not monitored population trends in response to management activities as required by Forest Plans and NFMA (Juel, 2003).

Please include in your analysis the possible effects of noxious weed introduction on Sensitive plant populations and other components of biodiversity. Please include in the analysis the results of monitoring of noxious weed infestation from past management actions in this drainage.

We request a careful analysis of the impacts to fisheries and water quality, including considerations of sedimentation, increases in peak flow, channel stability, risk of rain-on-snow events, and increases in stream water temperature, and landslide potential. What impact will the pre-commercial thinning have in RHCAs?

Please disclose in the NEPA document the results of up-to-date monitoring of fish habitat and watershed conditions, as required by the Forest Plans. Discuss the actual effectiveness of proposed BMPs in preventing sediment from reaching watercourses in or near the analysis area. What BMP failures have been noted for past projects with similar landtypes? We would like to see a thorough discussion of the BMPs and mitigation measures you would propose. Also, please disclose which segments of which roads in the watersheds to be affected by this proposal will not meet BMPs following project activities.

These questions are important because they fit in with Judge Erickson's ruling on the Clearwater in the North Fork Ranger District.

Please fully analyze and disclose cumulative impacts on TES fish species and soil productivity.

It is extremely important the FS disclose the environmental baseline for watersheds. Generally, this means their condition before development or resource exploitation was initiated. For example, the baseline condition of a stream means the habitat conditions for fish and other aquatic species prior to the impacts of road building, logging, mining, etc. Therefore, proper disclosure of baseline conditions would mean estimates of stream stability, pool frequency conditions, water temperature range—essentially the values of Riparian Management Objectives along with such parameters as sediment levels. When such information is provided, comparison with the current conditions (after impacts of development) will aid in the assessment of cumulative effects of all alternatives.

For every project proposal, it is important that the results of past monitoring be incorporated into planning. All Interdisciplinary Team Members should be familiar with the results of all past monitoring pertinent to the project area, and any deficiencies of monitoring that have been previously committed to. For that reason, we expect that the following be included in the NEPA documents or project files:

- A list of all past projects (completed or ongoing) implemented in the proposed project area watersheds.
- The results of all monitoring done in the project area as committed to in the NEPA documents of those past projects.
- The results of all monitoring which has been done in the proposed project area as a part of the Forest Plan monitoring and evaluation effort.
- A description of any monitoring, specified in those past project NEPA documents or the Forest Plan for proposed project area, which has yet to be gathered and/or reported.

Please disclose the name of any other past thinning and logging (or other development) projects (implemented during the life of the Forest Plans) whose analysis area(s) encompass the areas to be logged under this proposal (including any logging that would have a cumulative impact on ECA or other factors. Please disclose if the FS has performed all of the monitoring and mitigation required or recommended in any NEPA documents, and the results of the monitoring. This is important as several sales have been approved and logged and neither Forest is meeting forest plan fish and water quality standards.

Cumulative effects are defined by NEPA at 40 C.F.R. 1508.7 as:

. . . the impact on the environment which results from the incremental impact of the action when added to other past, present, and reasonable foreseeable future action regardless of what agency (Federal or non-Federal) or person undertakes such other actions. Cumulative impacts can result from individually minor but collectively significant actions taking place over a period of time.

This means the FS must consider the cumulative effects of activities. There is considerable logging, mining and other activity taking place on the two national forests.

It has been well established that site-specific Biological Evaluations (BEs) or Biological Assessments (BAs) must be prepared for all actions such as this. Further, the Forest Service Manual requires that BEs/BAs consider cumulative effects. The Forest Service Manual states that project BEs/BAs must contain "a discussion of cumulative effects resulting from the planned project in relationship to existing conditions and other related projects" [FSM 2672.42(4)].

The analysis also needs to consider heritage and cultural resources. The project area for the Lochsa Ranger District encompasses the national historic trail. Previously thinning along this trail was dropped in an appeal resolution of the Lochsa thinning proposal some years ago.

Please utilize the NEPA process to clarify any roadless boundary issues. It is not adequate to merely accept previous, often arbitrary roadless inventories—unroaded areas adjacent to inventoried areas were often left out. Additionally, there is a lot of public support for adding unroaded areas as small as 1,000 acres in size to the roadless inventory. Please examine if these unroaded areas adjacent to roadless areas have wilderness qualities.

Past comments have provided you with scientific studies refuting the agency's view of fire and the idea that logging is restoration. We leave you with yet another which is attached to this comment. Also, the claim that Douglas fir is not fire resistant is false. Its thick bark makes it one of the most resistant trees to fire.

There is irony in this proposal--supposedly thinning previously logged stands, which have too much regeneration--when the other scoping document suggests that gophers are killing too many trees in formerly logged stands. It makes the agency look rather silly.

Site Specific Issues

These are some site-specific concerns, which are simply examples of problems. Since the unit numbers are almost impossible to read on the maps, and they use a different numbering system on the scoping letter (12) versus the maps (14), we describe the units differently. The official legal boundary of the Nez Perce/Lolo National Historic Trail and roadless areas should have been shown on the maps. Frankly, it would have been far better to provide the information to the public in a usable form.

Lochsa Powell RD

Map 1's two most northerly units appear to be within the RHCA and shouldn't be there.

Map 3 contains units within the official boundary of the Historic Trail. These units are those within sections 8, 9, 10, 16 and 17 and should be removed from the project. Also the unit in the south part of section 17 crosses Eldorado Creek and shouldn't be there.

Map 4's southernmost unit near Brick Creek (section 28) appears to be in the RHCA and shouldn't be there.

Map 5's unit in sections 8 and 17 appears to be in the RHCA and shouldn't be there.

Map 6's northernmost unit in sec. 9 appears to be in the RHCA and shouldn't be there. Also, the southern unit is very close to the river corridor and should be dropped.

Map 7's unit in sections 4 appears to be in the RHCA and shouldn't be there. Units in sec 9 and 15 may be within RHCAs.

Map 8's two units in sections 30 and 20/21 appear to be in the RHCA and shouldn't be there.

Map 9 contains units within the official boundary of the Historic Trail. These two units are those in the northwest of the map and should be dropped.

Map 10 contains at least one unit that appears to be within the official boundary of the Historic Trail near Salmon Camp. Two near Stomach Camp are also in the same category and should be dropped. Two units in section 1 appear to be in the RHCA and shouldn't be there.

Map 14 contains several units that appear to be within the official boundary of the Historic Trail on Wendover Ridge and should be dropped. Several units in Badger and Wendover Creeks appear to be in the RHCA and shouldn't be there.

Map 14 contains several units in Parachute and Imnamatoon Creeks appear to be in the RHCA and shouldn't be there.

Moose Creek RD

Map 1's units are all within the Johnson Bar Project Area. If this was indeed important, why was it not identified in the Johnson Bar Salvage Sale EIS? Further, the northern most unit appears to be in the RHCA and it shouldn't be there.

Map 2's units are all within the Johnson Bar Project Area. If this was indeed important, why was it not identified in the Johnson Bar Salvage Sale EIS?

Map 3's units are all within the Johnson Bar Project Area. If this was indeed important, why was it not identified in the Johnson Bar Salvage Sale EIS? Further, the units in sections 25 and 36 appear to be in the RHCA and they shouldn't be there.

North Fork RD

Map 2's units along French, Jenson and Rescue Creeks and appear to be in the RHCA and they shouldn't be there.

Map 3's unit on Fix Creek isn't likely to be a site for future timber projection given the remoteness and steepness of the terrain. The Forest Service botched the Hidden Fix Timber Sale in the early 90s and it caused great damage.

Map 6's western unit in section 36 appears to be in the RHCA and it shouldn't be there.

Map 9's two units in sections 15 and 16 appear to be in the RHCA and shouldn't be there.

Map 10's unit on Skull Creek isn't likely to be a site for future timber projection given the remoteness and steepness of the terrain. The roads in this area frequently slide.

Palouse RD

Map 1's big unit in section 15 appears to be in the RHCA and it shouldn't be there.

Map 2's units in sections 4 and 10 appear to be in the RHCA and they shouldn't be there.

Map 4's unit in section 36 appears to be in the RHCA and it shouldn't be there.

Map 5's unit in section 27 appears to be in the RHCA and it shouldn't be there.

Map 6's unit in section 33 appears to be in the RHCA and it shouldn't be there.

Map 7's unit in section 6 appears to be in the RHCA and it shouldn't be there.

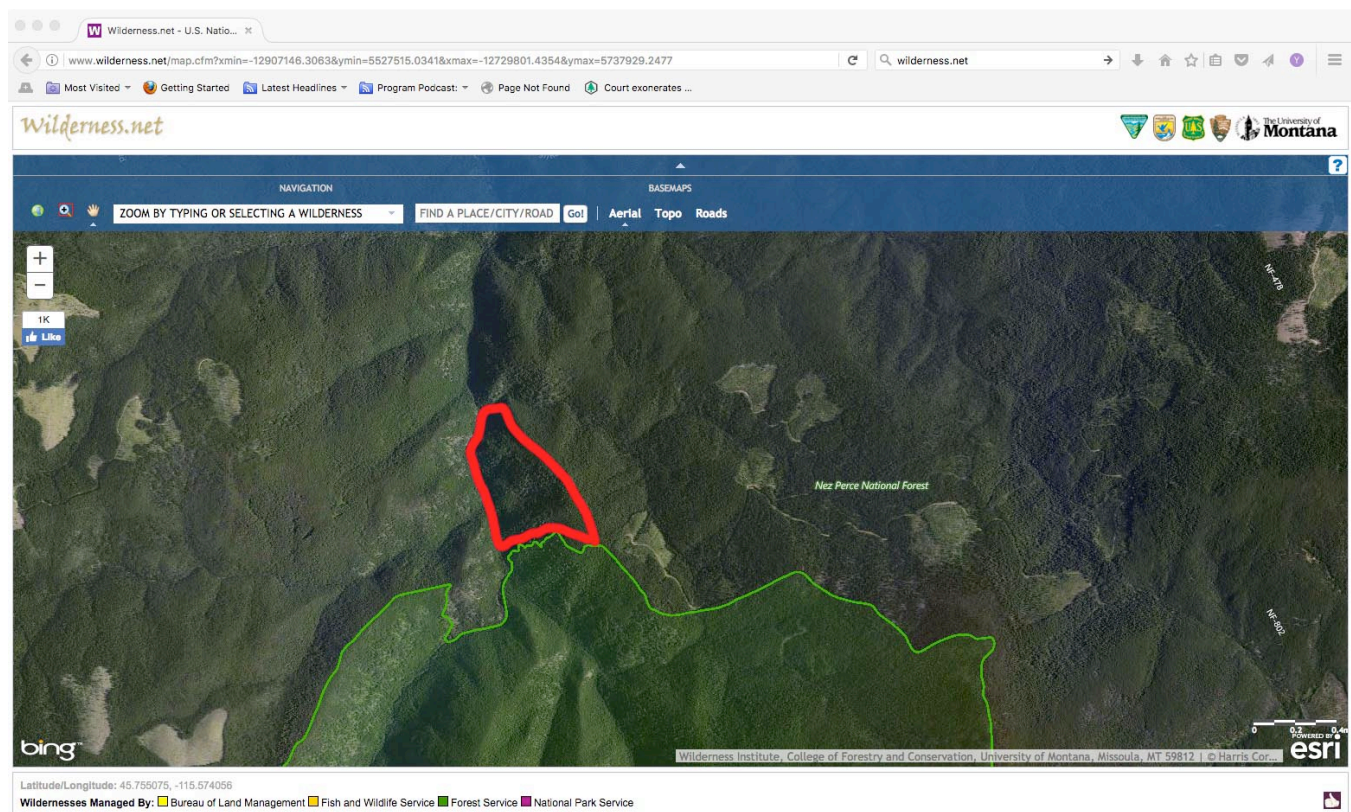
Map 10's eastern unit in section 21 appears to be in the RHCA and it shouldn't be there.

Red River RD

Almost all of these units were in roadless areas, of which boundary adjustments were made to only exclude the development. This is true of the Jack, Grouse, and Noble site of the infamous Cove-Mallard timber sale (Map 1). They are also mainly lodgepole pine. Thinning them makes little sense.

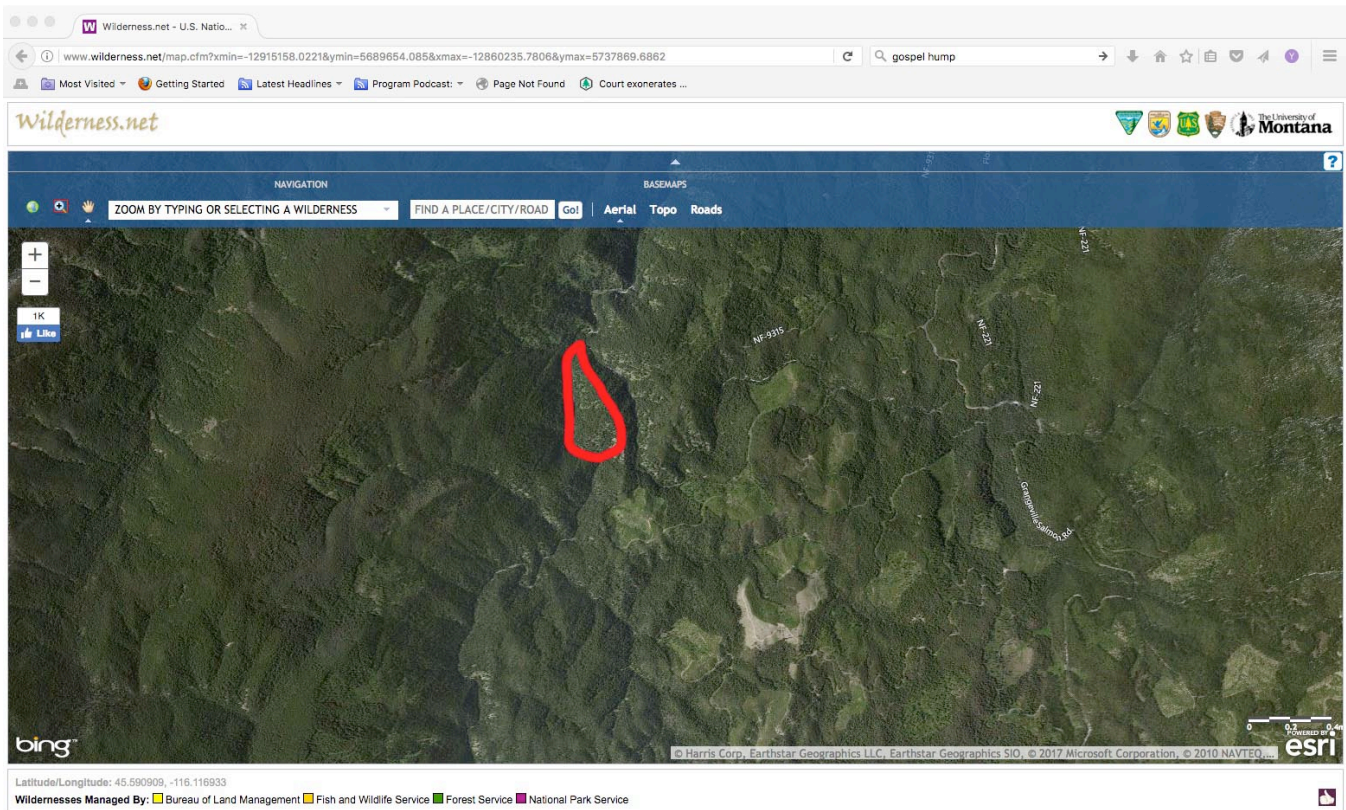
Similarly, Map 2's units, the infamous Mackey Day timber sale, are in an area that is remote and was roadless.

Map 3 is similar to map two in the 4-6 Mile timber sale. However, unit 1 goes down to Tenmile Creek, which is inaccurate as the cutting unit never crossed the ridge between Williams Creek and Tenmile Creek. Unit 1 must be dropped as the image below shows. The area in red is where the agency has improperly located the old cutting unit, which is clearly to the east of the former cutting unit. Tenmile Creek is an access to the Gospel-Hump Wilderness and cutting along the Creek would violate the reasons for this proposal.



Salmon River RD

Map 3's northernmost unit appears to be in the RHCA and it shouldn't be there. Further, this unit is in the Little Slate Roadless Area and is not a former cutting unit. The image below shows that to be the case. The area in red is the pre-commercial unit and it has not been logged. It should be dropped:



Big Creek Bridge Replacement, Five Mile ATV Bridge Replacement, Mill Creek Bridge Replacement, Sing Lee Bridge Replacement

These proposals seem to be beneficial and may fit within CE parameters. However, the real issue is whether mitigation money for the Snake River dams/Columbia hydro system should or can legally be used to conduct road and trail (Five Mile ATV) infrastructure that the Forest Service has the responsibility to maintain. If the agency cannot maintain its bridges on the road system, then by definition, those routes would be ones that the agency can't economically maintain. As we noted in a coalition letter dated August 28, 2015, regarding travel analysis:

The Forest Service Washington Office, through a series of directive memoranda, instructed forests to use the subpart A process to “maintain an appropriately sized and environmentally sustainable road system that is responsive to ecological, economic, and social concerns.”¹ These memoranda also outline core elements that must be included in each Travel Analysis Report.

The Forest Service needs to answer these important questions about infrastructure before proceeding. Also, why wasn't the Mill Creek Bridge addressed in the 2010 Mill Creek Bridge Replacement EA?

Brushy Fork Non-system Road Decommissioning

While we agree road-decommissioning projects are important and needed, there are three issues that need to be addressed in any analysis.

¹ Memorandum from Joel Holtrop to Regional Foresters *et al.* re Travel Management, Implementation of 36 CFR, Part 212, Subpart A (Nov. 10, 2010); Memorandum from Leslie Weldon to Regional Foresters *et al.* re Travel Management, Implementation of 36 C.F.R. Part 212, Subpart A (Mar. 29, 2012); Memorandum from Leslie Weldon to Regional Foresters *et al.* re Travel Management Implementation (Dec. 17, 2013).

- The agency needs to publish the monitoring results of past similar projects to make certain that negative impacts truly fit within a CE. We are concerned that this proposal might not fit with an EA, given the size of this project.
- Since the area is already revegetated, is removal of vegetation for recontouring truly needed? We are concerned that such extensive work, though intended to reduce erosion, may cause more erosion. We suggest that you consider options. One would be removal of all culverts and recontouring in the immediate area of the culverts. That could be combined with a less aggressive vegetation removal option, which would recontour only in areas of the roads where erosion is taking place. Such options would best be considered and evaluated in an EA.
- The removal of non-system roads, though important, does nothing to address the issue of too many system roads in light of agency regulations to come up with a minimum road system. Simply put, there are far too many roads on the Nez Perce and Clearwater National Forests. The number of these kinds of projects would not be needed if the agency truly adopted a minimum road system and then removed barriers on roads that would be decommissioned.
- We assume this would be done with mitigation money from the lower Snake River dams. It cannot be used to justify timber harvesting on section 8 and 10 in the future, based upon some future finding the watershed would meet forest plan standards.

Hungry Ridge Riparian Area Restoration

This proposal seem to be beneficial and may fit within CE parameters. However, we have some questions. Why wasn't this analyzed in the 2010 EA on restoration of Mill Creek itself? Further, we are concerned about the possible misuse of mitigation money for the Snake River dams/Columbia hydro system. The Forest Service is proposing to conduct a large timber sale on Hungry Ridge in the Mill Creek watershed. Mitigation money for the hydro system cannot be used to facilitate meeting forest plan objectives and standards in order to allow logging and roadbuilding in an area that would not meet, for example, the upward trend requirement in Appendix A.

Center Star Mining

The scoping letter merely alleges that the work will be done in one year from the decision, the summer of 2017. The roadwork itself may require more time than one year.

It should be emphasized the agency's duties under the ESA are not overridden by any "rights" the applicants may have under the 1872 mining law. The courts are clear in ruling that prohibitions under the ESA must be enforced, even to deny mining operation and: "of course, the Forest Service would have the authority to deny any unreasonable plan of operations or plan otherwise prohibited by law. E.g., 16 U.S.C. 1538 (endangered species located at the mine site). The Forest Service would return the plan to the claimant with reasons for disapproval and request submission of a new plan to meet the environmental concerns." (*Havasupai Tribe v. U.S.*, 752 F.Supp. 1471, 1492 (D. Az. 1990) affirmed 943 F.2d 32 (9th Cir. 1991) cert. denied 503 U.S. 959 (1992); See also *Pacific Rivers Council v. Thomas*, 873 F.Supp. 365 (D. Idaho 1995); *Pacific Rivers Council v Thomas*, 30 F.3d 1050 (9th Cir 1994) cert. denied 115 S.Ct. 1793 (1995)).

The issue of claim validity is important. This is important because the reasonableness of the proposed action needs to be adequately considered for such a proposal.

Activity or facilities that are “reasonably incident” will vary depending on the stage of mining activity. Through case law that has evolved since 1955, the reasonably incident standard has been interpreted to include only activity or facilities that are an integral, necessary, and logical part of an operation whose scope justifies the activity or facilities. Activities that are “reasonably incident” would be expected to be closely tied to, and be defined within, what would be reasonable and customary for a given stage of mining activity. Such levels of activity would include initial prospecting, advanced exploration, predevelopment, and actual mining. Each stage is defined by an increasing level of data and detail on the mineral deposit that, in total, contribute to an increasing probability that the deposit can be mined profitably. Each stage also has an increasing impact on the land.

The logic of sequencing is also obvious to the Forest Service whose charge is the management of surface resources: Keep it small, to the extent practicable, and build, if warranted, from there. In other words, minimize the amount of disturbance to surface resources in order to prevent unnecessary destruction of the area, and to ensure to the extent feasible that disturbance is commensurate with each level of development. How do nine sample locations and trenches fit in with these requirements?

That simple principle is of paramount interest to the Forest Service that, by its Organic Act, is responsible on lands in the National Forest System “to regulate their occupancy and use to preserve the forest thereon from destruction.” Equally important, the principle has been articulated by the 9th Circuit Court in *United States v. Richardson*, 599 F.2d 290 (9th Cir. 1979), *cert. denied*. The Court clearly articulated that mining is a sequential process composed on logical steps. Further, mining activity that would cause significant surface disturbance on lands in the National Forest System must be related to a logical step in that process and the steps must be in the proper sequence. And, significant disturbance requires more than a simple CE.

The scoping letter lacks enough information to make that determination. The question must be asked, “Has the claimant made the discovery of a “valuable mineral deposit” on this claim?” (30 U.S.C. 22). A mining claim location does not give presumption of a discovery. (*Ranchers Exploration v. Anaconda*). “[L]ocation is the act or series of acts whereby the boundaries of the claim are marked, etc., but it confers no right in the absence of discovery, both being essential to a valid claim.” (*Cole v. Ralph*, 252 U.S. 286, 294-96 (1920)).

In essence, the Forest Service is proposing to approve the project prior to any analysis and leaving specific details to a “field review” to take place later. The automatic assumption this is something that can be approved with a CE fails to take a hard look at the crucial issue of whether this complies with the ESA, whether it complies with clean water law and policy for ground and surface water and the amount of time this project would take.

Please send us a copy of the plan of operations and any other documents submitted by the applicant for this proposal.

Gold Dust Mines

The issue of claim validity is important because the scoping letter states the purpose is to determine if sufficient quantities of valuable mineral exist. This is important because the reasonableness of the proposed action needs to be adequately considered for such a proposal.

Activity or facilities that are “reasonably incident” will vary depending on the stage of mining activity. Through case law that has evolved since 1955, the reasonably incident standard has been interpreted to include only activity or facilities that are an integral, necessary, and logical part of an operation whose scope justifies the activity or facilities. Activities that are “reasonably incident” would be expected to be closely tied to, and be defined within, what would be reasonable and customary for a given stage of

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Pocket Gopher Poisoning Lochsa Powell, North Fork and Palouse Ranger Districts

After decades of dispersing poisoned oats, there are apparently still serious seedling mortality problems.² Maybe this tactic is not the most effective at controlling pocket gopher damage, and the agency should explore other avenues.

Even though the agency proposes to place oats in burrows, after dying of strychnine poisoning, these poisoned gophers then enter the food chain. A multitude of forest scavengers, including a variety of T, E & S species, have the potential to eat this poison-laced carrion, thus increasing the chances of spreading through the food chain.

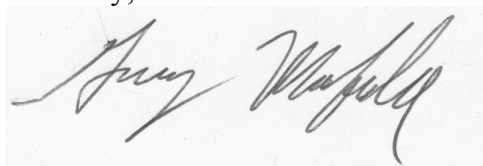
Furthermore, the protocol as described seems to make no sense. Making a hole from above in a burrow, then placing oats and then covering up the hole would seem to bury the oats and block the burrow.

Some sites appear to nearly overlap with the thinning proposal addressed earlier in this comment letter. Compare Lochsa Map 2 pocket gopher control to Lochsa Maps 6 and 7 for commercial thinning. Even more dramatic is that the Map 1 for Palouse RD thinning has a large unit in section 15 and that unit is the same as the gopher poisoning unit for Palouse Map 1! So the Forest Service is concerned about overstocking so it wants to thin trees in the same place it is concerned about too little stock, so it feels compelled to kill gophers. Again, this makes the agency look rather silly.

Please keep us updated on all of these proposals.

² Of course, the irony of killing gophers to protect seedlings when the agency also finds the need to thin stands because they are overstocked should be obvious.

Sincerely,

A handwritten signature in dark ink, appearing to read "Gary Macfarlane", written in a cursive style on a light-colored rectangular background.

Gary Macfarlane

100% post-consumer recycled paper, processed without chlorine